

REMARKS

Initially, it is noted that the Office Action omitted the pendency of Claims 33-37. The claims pending should be 1-6, 9-29, 32, **33-37**, 40-42 and 48-74. This was confirmed with Examiner Pham in a telephone conference on January 5, 2009.

It was also confirmed with Examiner Pham that she has only issued an election of species requirement, notwithstanding the inclusion of paragraph 3, on page 3, of the Office Action, relating to combination and subcombination inventions. Therefore, the Applicant will address the election of species requirement.

The present election requirement, and its timelines and propriety, is not at all understood by the Applicant. With respect first to the timelines and propriety, Applicant notes that the Examiner had previously issued an Office Action on merits dated June 27, 2008, which addressed the patentability of all then pending Claims 1-82. The Applicant responded by filing an Amendment on September 29, 2008, addressing the prior art cited by the Examiner. The present election requirement therefore appears neither timely nor proper.

With respect to the election requirement itself, the Applicant finds it rather confusing as the Examiner appears to have labeled each figure of the application as a separate species, without providing any reasons in support thereof. The MPEP §806.04(e) states that "[s]pecies always refer to the different embodiments of the invention." Just how each figure relates to a different embodiment, is neither shown by the Examiner nor understood by the Applicant.

In addition, the Examiner states that “[c]urrently, there is no generic claim.” How does this fit into the definition of a generic claim per MPEP §806.04(d), is neither explained nor supported by the Examiner. To the contrary, the Applicant asserts that Claims 1 and 32 are generic.

In view of the entirely confusing nature of the election requirement and the complete lack of any supporting explanation or arguments, the Applicant is unable to respond properly. (It is noted herewith that two (2) telephone interviews with Examiner Pham on January 5, 2009 and April 6, 2009, did not provide any further insight.)

The above notwithstanding and in an effort to expedite prosecution, the Applicant will attempt to respond to the present election requirement, as best understood, as outlined below.

Figures 1A, 1B and 1C are directed to the overall system for position sensing, and depict three alternative positions of the radio-transmitting devices. Likewise, Figures 3A, 3B and 3C depict three alternative RF signal-processing block diagrams for the radio-receiver channels. In the same manner, Figures 4A and 4B depict two types of radio-transmitting devices, and Figures 8, 8A and 9-12 depict various types of controllers for use in the present invention. The remaining Figures 2 and 5-7 depict further details of the various components of the overall system shown in Figures 1A-1C.

Therefore, if, *arguendo*, there were to be an election of species requirement, it can be as follows:

- Group I - Figures 1A, 1B and 1C
- Group II - Figures 3A, 3B and 3C
- Group III - Figures 4A and 4B
- Group IV - Figures 8, 8A and 9-12.

In other words, one species, from each of the above Groups I-IV, can be elected and examined.

Consistent with the above, the Applicant provisionally elects herewith, without any prejudice of any kind whatsoever, the species disclosed in Figures 1A, 2, 3C, 4B, 5-7 and 11, while preserving all of its rights as if no election was ever made. This is due in part to reason that the present election requirement, as set forth in the Office Action of December 22, 2008, cannot be properly responded to because it is entirely confusing, unsupported and is believed to be improper.

In view of the above, it is respectfully requested that the present election of species, as set forth in the Office Action of December 22, 2008, requirement be withdrawn, and all Claims 1-6, 9-29, 32, 33-37, 40-42 and 48-74, be examined in view of the Amendment filed on September 29, 2008.

Should the Examiner insist on an election requirement, the Applicant respectfully requests that either she i) provide explanation and arguments in support thereof consistent with the MPEP, or ii) accept the above-proposed grouping of the figures. In

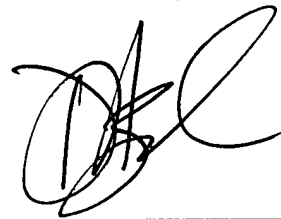
Appl. No.: 10/523,806
Response to Election of Species Requirement dated May 21, 2009
Reply to Office Action (Election Requirement) dated December 22, 2008

the event, the Examiner chooses the latter, the Applicant notes that Claims 1 and 32 are generic, and Claims 1-6, 9-15, 18-25, 28-29, 32-37, 40-42, 48-52, 57, 61-67 and 72, read on the proposed elected species depicted in Figures 1A, 2, 3C, 4B, 5-7 and 11, and requests the Examiner to examine these claims.

It is believed that no additional fee is due for this submission. Should that determination be incorrect, the Commissioner is hereby authorized to charge any deficiency, or credit any overpayment, to our Deposit Account No. 01-0433, and notify the undersigned in due course.

Should the Examiner have any questions or wish to discuss further this matter, please contact the undersigned at the telephone number provided below.

Respectfully submitted,



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